

REMARKS

In a final Office Action dated November 7, 2006, the Examiner rejects claims 45-60 (all pending claims). In response to the Office Action, Applicants respectfully traverse the rejections. In light of the following arguments, Applicants respectfully request that this application be allowed.

The Examiner rejects claim 45 under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent Number 4,918730 issued to Schulze (Schulze) in view of U.S. Patent 5,918,730 issued to Blum et al (Blum) in further view of U.S. Patent number 5,327,521 issued to Savic et al. (Savic). In order to maintain a rejection the Examiner has the burden of providing evidence of *prima facie* obviousness. See MPEP §2143. See also In Re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In order to prove *prima facie* obviousness, the Examiner must provide evidence in the prior art of a motivation to combine or modify a reference, a reasonable expectation of success, and a teaching of each and every claimed element. *Id.* The Examiner has not provided a combination of references that teach each and every of the claim limitations. Specifically, claim 45 recites “a plurality of segments of said plurality reference works having a known segment size and a known hop size and said predetermined hop size of said sampled work is less than said known hop size.” The Examiner has failed to provide a teaching of hop sizes of a reference and a sampled work being different.

Applicants’ basic assertion is that the Examiner has not provided a teaching of two different works having segments with different hop sizes to facilitate an accurate comparison. Applicants admit the Examiner has provided a teaching of hop sizes.

However, the Examiner has failed to provide a teaching of a reference and a sample work having segments with different hop sizes. Applicants provide the following arguments to present that the Examiner has not provided a teaching of this concept. Applicants ask the Examiner to pay particular attention to the third following paragraph that discusses Savic as this paragraph sets forth why the different hop sizes for different works is not taught in the rejection provided by the Examiner.

Claim 45 recites segments of the sampled works and segments of each reference work. The hop size of the segments of the sampled work is less than the hop size of the segments of a reference work. Thus, you have two different items or works divided into segments with the segments of a reference work being greater than the size of a segment of a sampled work. Schulze does not teach this limitation. Schulze does not teach hop size anywhere in the reference. Therefore, Schulze cannot possibly teach the hop sizes of the reference works are different from the hop sizes of the sampled work. The use of different hop sizes for the references and sampled works allows for better identification of the sampled work as they allow a greater possibility that a signature of a reference segment aligns with a signature of a segment of the sampled work. Thus, Schulze does not teach hop sizes of two compared references being different.

Blum also does not teach that the hop size of segments in reference works are different from the hop size of a sampled work. Applicants have read the entirety of Blum and have not found teaching of hop size in Blum. Thus, it cannot teach having different hop sizes for the references and sampled work.

Savic also does not teach the limitation of the hop size for reference segments is different from the hop size of the sampled work. Savic does teach the concept of a hop size at Col. 4, lines 40-44 where the sample data is segmented into blocks of 256 samples each with a shift distance of 1/4 or 64 samples. There is nothing in Savic that teaches a first or reference set of data has a first hop size and a second or sample set of data that has a second hop size. The purpose of the differing hop sizes in the claims is to provide a greater chance of a two segments matching up with respect to the data in the sample in order to get a greater success in matching a segment of the reference to a segment of a sample. Savic does not have this concern because Savic is teaching a speech transforming system in which a recording of a voice is split into overlapping segments for analysis. See Col. 6, lines 7-19 and Col. 7, lines 3-17. Since there are no comparisons of segments of different items, Savic cannot teach that the hop sizes of the two items are different to try to make matches more likely.

Since none of the above cited references teach that the hop sizes of the references and the sampled work are different, the combination of the references does not teach this limitation. Thus, Applicants respectfully request that the rejection of claim 45 be removed and claim 45 be allowed.

Claims 46-52 are dependent from claim 45. Thus, claims 46-52 are allowable for at least the same reasons as claim 45. Therefore, Applicants respectfully request that claims 46-52 be allowed.

Claim 53 recites an apparatus that performs the method of claim 45. Thus, claim 53 is allowable for at least the same reasons as claim 45. Thus, Applicant respectfully requests that claim 53 be allowed.

Claims 54-60 are dependent from claim 53. Thus, claims 54-60 are allowable for at least the same reasons as claim 53. Therefore, Applicants respectfully request that claims 54-60 be allowed.

If the Examiner has any questions regarding this response or the application in general, the Examiner is invited to telephone the undersigned at 775-586-9500.

Respectfully submitted,  
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Dated: December 18, 2006 /william p. wilbar/

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